

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff/Respondent,

No. CR 11-97 CRB

v.

ORDER DIRECTING RESPONSE

CUONG MACH BINH TIEU,
Defendant/Petitioner.

Petitioner Cuong Mach Binh Tieu has filed a motion asking the Court to correct, pursuant to Federal Rule of Criminal Procedure 36, what he asserts is a clerical error in the judgment and in the presentencing report. See Mot. (dkt. 806). Essentially Tieu argues that he “was twice charged and [pled] guilty for the same counts and dates” in Counts 5 and 7. Id. at 1. The Court notes that “Rule 36 was intended to allow correction of clerical errors, not to allow reassessment of the merits of an earlier decision after the time for reconsideration or appeal has elapsed.” See United States v. Jones, 608 F.2d 386, 389 (9th Cir. 1979); see also United States v. Penna, 319 F.3d 509, 513 (9th Cir. 2003) (“Rule 36 is a vehicle for correcting clerical mistakes but it may not be used to correct judicial errors in sentencing.”). Nonetheless, out of an abundance of caution, the Court DIRECTS the government to respond to Tieu’s motion within 14 days of this order. Tieu may file a reply,

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1 if he wishes to do so, within 28 days of this order.

2 **IT IS SO ORDERED.**

3 Dated: December 11, 2017



4 CHARLES R. BREYER
5 UNITED STATES DISTRICT JUDGE
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